IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 317 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LTD

Appearance:

1. INCOME TAX REFERENCE No. 317 of 1983

MR B.B. NAYAK With MR MANISH R BHATT for Petitioner

MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 17/04/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following two questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961:-

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenditure incurred by the assessee for entertainment should not be disallowed under Section 37(2B) of the I.T.Act, 1961?"

2. "Whether, on the facts and in the circumstances of the case the Tribunal was right in law in coming to the conclusion that the assessee was entitled to deduction in respect of Service fees paid for trade mark "Tebilized"?

2. The matter relates to the Assessment Year 1977-78. In the relevant previous year, the assessee claimed deduction of Rs. 9,675/- as expenditure incurred on refreshment etc., which was disallowed by the ITO. The CIT (Appeals) however, allowed the same, which decision came to be confirmed by the Tribunal. The relevant previous year was 1976-77. Explanation 2 was inserted in Section 37(2A) retrospectively with effect from April 1, 1976 and it read as under:-

"Explanation 2.-- For the removal of doubts, it is hereby declared that for the purposes of this sub-section and sub-section (2B), as it stood before the 1st day of April, 1977, `entertainment expenditure' includes expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in the office, factory or other place of their work."

As per the aforesaid explanation, an enlarged meaning is given to the words "entertainment expenditure" for the purposes of the Act, with effect from April 1, 1976. Therefore, no allowance could be made in respect of expenditure in the nature of entertainment expenditure incurred within India by an assessee at the relevant time on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever. However, expenditure incurred on food or beverages provided by the assessee to its employees in the office, factory or other place of their work, was excluded and therefore, it could

be allowed. In this view of the matter, the amount which is required to be allowed in so far as the expenditure on providing food etc. to its employees is concerned will have to be separately worked out from the total amount of deduction at Rs. 9,675/- and the rest of the amount which is included in the definition of entertainment expenditure by way of explanation No.2 will have to be disallowed. In similar context, this Court in Saraspur Mills Vs. CIT, reported in 226 ITR 533, after referring to the decision of the Hon'ble the Supreme Court in CIT Vs. Patel Brothers, reported in 215 ITR 165, observed that so far as the entertainment expenditure is incurred for persons other than employees, the assessee was not entitled to deduction thereof. The matter was referred back to the Tribunal for deciding the same in accordance with law. We accordingly hold that the Tribunal was not right in concluding that the expenditure incurred by the assessee for entertainment should not be disallowed under Section 37(2B) of the Act without considering the impact of explanation 2 and the ratio of the decision of the Hon'ble the Supreme Court in CIT Vs. Patel Brothers, reported in 215 ITR 165. Question No.1 is answered accordingly. The Tribunal may now consider and decide this point in light of the above.

3. As regards question No.2, deduction was claimed in respect of payments made by the assessee to Mettur Beardsell Limited for use of trade-mark "Tebilized". The ITO disallowed the claim. The CIT (Appeals) held that on reading the agreement it appeared that the trade-mark was owned by Messrs Mettur Beardsell Limited and that it had also rendered services to the assessee in this connection. It was held that unless contrary was proved, the arrangement was required to be regarded as `real state of affairs'. The disallowance was therefore, deleted by the Tribunal following its earlier decision dated 20.6.1981 in the case of Ashoka Mills Ltd.

It appears that in a similar case CIT Vs. Ashoka Mills, reported in 218 ITR 526, this Court held that the assessee was carrying on business of manufacturing cloth and the process employed under the trade-name "Tebilized" confer an anti-crease property on the cloth and the agreement was entered into with `MB' for the purpose of enabling it to carry on its business more efficiently and more profitably while leaving the fixed capital untouched. It was held that the agreement permitting the assessee to make use of the particular process and the user of the trade-mark "Tebilized" did not create any asset nor did they confer any right of a permanent nature in favour of the assessee, but the agreement merely

enabled the assessee to confer on the product the advantages of better quality and marketability. It was held that the payment of royalty was therefore, clearly in the course of the profit earning process and not for acquisition of an asset or right of a permanent character and therefore, deductible as revenue expenditure.

In view of the above decision taken by this Court in a similar context, we hold that the Tribunal was right in coming to the conclusion that the assessee was entitled to deduction in respect of the sums paid for using the trade mark "Tebilized". Question No.2 is therefore, answered in the affirmative in favour of the assessee and against the Revenue.

The reference stands disposed of accordingly with no order as to costs.

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*/Mohandas